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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,865	10/17/2003	T. Wade Fallin	MED-1 CON CIP	9572
44270	7590	12/21/2006	EXAMINER	
MEDICINELODGE INC. 180 SOUTH 600 WEST LOGAN, UT 84321			ISABELLA, DAVID J	
			ART UNIT	PAPER NUMBER
			3738	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
30 DAYS		12/21/2006	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT	PAPER
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20061214

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

SEE ATTACHED PAPER

DAVID J ISABELLA
Primary Examiner
Art Unit: 3738

Response to Amendment

The reply filed on 10/11/2006 is not fully responsive to the prior Office Action because of the following omission(s) or matter(s): Newly submitted claims 103-138 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The claims are directed to a system for replacing at least a portion of a natural facet of a first vertebra comprising: a superior and inferior articular and a fixation member implantable in the first vertebra to secure the surfaces to the first vertebra in any of a plurality of relative orientations between the superior and inferior articular surfaces. The original claims were directed to a prosthesis comprising: an articulating surface that articulates with another facet; a bone contacting surface that contacts a surface of the vertebra, said articulating surface being connected to said bone contacting surface; and a fixation element that attaches said bone contacting surface to the vertebra, wherein said prosthesis is configured so that no portion of said prosthesis contacts the posterior arch of said vertebra.

Applicant has failed to establish the relationship between each newly presented claim and the previously elected/examined claims. By changing the preamble from a prosthesis to a system, it appears that the newly presented claims are in fact directed to an invention distinct from the prior claimed invention.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 103-138 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and

MPEP § 821.03. Since these claims are the only pending claims in the application, there are no claims pending for consideration.

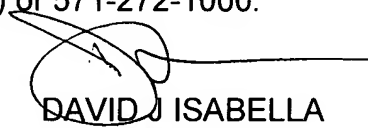
. See 37 CFR 1.111. Since the above-mentioned reply appears to be *bona fide*, applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID J. ISABELLA whose telephone number is 571-272-4749. The examiner can normally be reached on MONDAY-FRIDAY.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CORRINE MCDERMOTT can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3738

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



DAVID J ISABELLA
Primary Examiner
Art Unit 3738

DJI
8/24/2006